# THE IMPEACHMENT OF LEVI HUBBELL

By JOHN BELL SANBORN, Ph. D.

[From Proceedings of the State Historical Society of Wisconsin, 1905]

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Those who believe that the world is growing better may receive encouragement from the fact that the only impeachment in the history of Wisconsin occurred in early days. Judge Levi Hubbell, who was thus differentiated from the other circuit judges of his time, was chosen at the first judicial election held in the state. The later immunity from impeachment may indicate either that our present officials are better than those of the past, or that we are less critical than our predecessors, or less combative—probably the last. The campaign material of the present day may seem to belie this statement, but we are much more calm and restrained in political matters than our fathers were fifty years ago. This solitary impeachment, moreover, did not relate to a strictly partisan office. Whatever has been the feeling aroused by party strife, and whatever have been the charges made in the heat of political campaigns, they have never found expression in this drastic action of the assembly. Against the judiciary, always well removed from political feeling, has this weapon alone been directed, and in this one instance the senate refused to convict.

The constitution of Wisconsin, adopted in 1848, provided for a judicial organization by dividing the state into five circuits, in each of which a judge was to be chosen for terms varying from two to six years in the first instance, and thereafter

for six years. These circuit judges were also collectively to constitute the supreme court of the state.[1] The second circuit, consisting of Milwaukee, Waukesha, Jefferson, and Dane counties, was the largest and most important. For the election which was to occur upon August 7, 1848, party conventions were held therein in order to nominate candidates. Abram D. Smith, afterwards a judge of the supreme court, was nominated by the Democrats, Francis Randall being named by the Whigs.[2] Much dissatisfaction was expressed with the Democratic nomination,[3] the Madison *Argus* going so far as to refuse to support the candidate in language that brought out threats of a libel suit from Smith.[4] Comparatively late in the campaign Levi Hubbell, who had been mentioned as a possible nominee of the Democrats,[5] entered the field as an independent candidate. It was some time before the result of the election was known, but it was at last ascertained that Hubbell was elected by a plurality of 66 votes over Smith and 107 votes over Randall.[6]

The successful candidate was born in New York state April 15, 1808. He was a graduate of Union College, later being adjutant-general of New York and a member of the legislature of that state.[7] In 1844 he came to Milwaukee, where he soon became the senior member of the firm of Hubbell, Finch, and Lynde, the other members whereof were Asahel Finch and William P. Lynde, both well known in the legal history of the state.[8]

[1] Constitution, art. vii, secs. 4–7.

[2] Milwaukee *Sentinel-Gazette*, July 28, 29, 1848.

[3] *Ibid*, July 28, 29, Aug. 1–5.

[4] Madison *Argus*, July 28, Aug. 1, 8, 1848.

[5] *Sentinel-Gazette*, July 18, 1848.

[6] According to the Madison *Argus* (Aug. 28, 1848), the vote stood: Hubbell, 1,606; Smith, 1,540; Randall, 1,499.

[7] Wisconsin Bar Association *Reports*, i, p. 111.

[8] The lives of Hubbell mention this partnership, but those biographies of Finch that I have seen do not. The card of Hubbell, Finch, and Lynde appears in the *Sentinel* for July 20, 1844.

In the drawing of lots by the various circuit judges to determine the length of their respective terms, Judge Hubbell's service was fixed at three years.[1] He consequently came up for re-election in the fall of 1851. That his conduct had not been entirely satisfactory is evident from the opposition manifested against him when he became a candidate to succeed himself, and that he did not do so at the desire of his party, but was nominated by a call of his friends. A convention of the Democrats of the circuit, held at Oconomowoc, August 27, 1851, refused to make any nomination, but passed resolutions condemning the procedure of Hubbell.[2] He was also opposed by the Milwaukee *Wisconsin* and the *Free Democrat,* while the *News* and the *Sentinel* supported him. The two latter did so because it considered him equal in ability to his opponent, while he had had the advantage of three years' experience on the bench. Politically, the *Sentinel* should have opposed him.[3]

The opposition to Hubbell appears to have been personal rather than caused by the wish for any particular candidate in his place; but at last his former partner, Asahel Finch, was chosen by the opposition, and the campaign was an extremely bitter one, conducted on both sides with small regard for the amenities of the occasion. The charges against Finch and his fitness for the place do not here concern us. Much of the criticism of Hubbell, particularly that of the *Free Democrat,* edited by the well-known S. M. Booth, was extremely abusive.[4] There was little definiteness in the opposition, however, and only two direct charges were made against the judge; one of these was, that in the trial of one Haney in Dane County for assault, the sentence imposed was less than that allowed by law.[5] This also was one of the charges in the impeachment, and will be considered in that connection. The

[1] Madison *Argus*, Aug. 28, 1848.

[2] *Free Democrat*, Aug. 28, 1851.

[3] See *Sentinel*, Sept. 9, 1851.

[4] See the issues of this paper for August and September, 1851.

[5] See *Sentinel*, Sept. 4, 11, 1851.

other charge was connected with the Macaboy case, wherein the judge had allowed a defendant in a criminal trial to make a statement to the jury in his own behalf.[1] According to modern standards, this was not a serious accusation; but Booth considered that it showed the grossest maladministration.[2] It was claimed at the time of the impeachment that other charges against Hubbell were known at the time of his re-election and published in handbills;[3] but I can find no evidence that charges other than those mentioned were made at that time. It is significant that the heat of a campaign was able to bring out only one of the numerous charges afterward made. Judge Hubbell was re-elected by a good majority—about 274 in Milwaukee County, 569 in Waukesha, and 100 in Dane, while the vote was nearly a tie in Jefferson.[4]

Not long after the beginning of his second term there came before Judge Hubbell a case which probably had much influence on his subsequent career. The Radcliff murder trial was one of the famous incidents in the early days of Milwaukee. There seemed no question of the guilt of the defendant, and years later a story was current that the prisoner had confessed to his attorney, during the trial, and that this confession was communicated to the judge.[5] Be this as it may, Radcliff was acquitted by the jury. When the verdict was brought in, Judge Hubbell examined it for some time and then asked, "Gentlemen of the jury, is this your verdict?" The foreman replied, "Yes, your honor;" whereupon Judge Hubbell answered, "All I have to say is, if this is so, may God have

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[1] *Free Democrat*, Aug. 19, 1851.

[2] *Ibid*, Aug. 16, 1851.

[3] This statement was made in the Grant County *Herald* and denied in the *Free Democrat*. See the latter paper for July 23, 1853.

[4] *Sentinel*, Oct. 2, 1851.

[5] *Sentinel*, March 11, 1852; *Free Democrat*, March 10, 1852; Milwaukee *Telegraph*, Oct. 31, 1880; quoted in [Frank A. Flower], *History of Milwaukee*, p. 315.

mercy on your consciences!"[1] The foreman of this jury was W. K. Wilson, of Milwaukee, and on the twenty-sixth day of the following January (1853) he presented to the speaker of the assembly a communication charging Hubbell with high crimes, misdemeanors, and malfeasances in office.[2] It may be that the impeachment would have taken place had that unfortunate remark never been addressed to him by Judge Hubbell, but this seems doubtful.[3]

A motion to send these charges to the judiciary committee was lost, 13 to 63; and the matter was referred to a select committee consisting of P. B. Simpson of Lafayette County, Horace T. Sanders of Racine, George W. Cate, of Portage, later circuit judge, C. Latham Sholes of Kenosha County, and E. N. Foster of Dodge.[4] It will be noted that none of these came from Hubbell's circuit.

A few days later this committee received permission to send for persons, papers, and records; and soon after that the speaker was authorized to issue subpœnas as might be required by the committee.[5] Need of legal assistance was soon felt, and E. G. Ryan, who had attained fame in the second constitutional convention and who was then one of the leaders of the Milwaukee bar, was summoned by telegraph (January 27), and assisted the committee in the investigation until the twenty-third of February.[6]

The procedure was that of a grand jury, and Hubbell was not allowed to appear, although he stated both to the assembly and to the public that he desired in every way to assist the

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[1] *Free Democrat*, March 10, 1852; *Sentinel*, March 11, 1852.

[2] *Assembly Journal*, 1851, pp. 98–99.

[3] It was stated in the *Sentinel* (Jan. 29, 1853) that the charges were put forward by another who did not appear, but I find no confirmation of this.

[4] *Assembly Journal*, 1853, pp. 98, 99.

[5] *Ibid*, pp. 110, 118.

[6] Petition in Ryan v. State, in supreme court MS. files.

committee.[1] On February 23, the committee reported that they found that Levi Hubbell had been "guilty of divers acts of corruption and malfeasance in the discharge of the duties of his said office, and that public justice requires that the said Levi Hubbell should be removed from his said office as judge of the second judicial circuit." The procedure recommended was by address of both houses in pursuance of section 13, article vii, of the constitution.[2] It was asserted that by proceeding in this manner the legislature would not be bound by the strict legal rules governing an impeachment.[3]

The assembly decided to impeach, however, and the services of Ryan were again requested, he being in attendance from March 9 to 27, engaged in the preparation of the charges. The articles of impeachment were agreed to by a unanimous vote, and the election of managers to conduct the trial resulted in the choice of P. B. Simpson, H. T. Sanders, J. Allen Barber, George W. Cate, and Ezra Wheeler.[4]

On the twenty-second of March the senate resolved itself into a court of impeachment. In the absence of the lieutenant-governor, the oath was administered by the chief clerk, to D. C. Reed, the president pro tem., who in turn administered it to the senators. The managers being then announced, Mr. Sanders read at length the articles of impeachment and delivered an engrossed copy to the clerk. There were eleven charges, each of a general nature, and under these were numerous specifications, amounting in all to seventy. It is evident from this number that the committee had with great minuteness reviewed the five years of Hubbell's services upon the bench. In some cases, however, the same matter was presented in different form, under different charges; but the whole number of distinct accusations against him was at least fifty.

[1] See letter to the assembly, Feb. 17, *Assembly Journal*, 1853, p. 259; *Evening Wisconsin*, Feb. 1, 1853; Milwaukee *Sentinel*, Feb. 2, 1853.

[2] *Assembly Journal*, 1853, pp. 300–301.

[3] *Free Democrat*, Feb. 28, 1853.

[4] *Assembly Journal*, 1853, pp. 364–366, 577–581.

The first charge was that of receiving a bribe; the second, with three specifications, accused him of adjudicating cases in which he was interested; the third, with two specifications, concerned the inflicting of punishments less than those prescribed by law; the fourth, with six specifications, related to his acting as judge in cases in which he had previously been of counsel; the fifth, with three specifications, was to the effect that he had used money paid into court; the sixth, with three specifications, was regarding the consultation with suitors in his court; the seventh, with eight specifications, charged him with undue partiality; the eighth, with four specifications, with immoral conduct; the ninth, with six specifications, with arbitrary and oppressive exercise of his judicial functions; the tenth, with twenty-one specifications, charged that he had allowed himself to be approached and influenced out of court in suits pending before him; and the eleventh, with thirteen specifications, was that he had officiously interfered and intermeddled with suits instituted in the courts of the state.[1]

To conduct his defense Judge Hubbell had engaged Jonathan E. Arnold and James H. Knowlton, two of the best known lawyers of the state, who entered a formal plea of not guilty. Meanwhile an adjournment of the legislature was taken until the first Monday in June. When that time arrived neither the senate nor the assembly was ready to proceed. The upper house met each day, but nothing was done for a week because of the absence of witnesses.[2] Nor were the managers for the assembly prepared with counsel, and it was not until June 8 that such employment was authorized.[3] Ryan was again sent for, and it was stated that W. K. Wilson went to Milwaukee to secure him.[4] Meanwhile, the members of the

[1] *Trial of Impeachment of Levi Hubbell*, reported by T. C. Leland (Madison, 1853), pp. 5–19.

[2] Of the 55 witnesses subpœnaed, only 6 were present on June 9—*Trial*, p. 30.

[3] *Assembly Journal*, 1853, p. 839.

[4] *Free Democrat*, June 10, 1853.

legislature had an opportunity to enjoy the early summer beauty of Madison. Mr. W. H. Watson, one of the editors of the *Sentinel,* wrote: "Madison is certainly one of the most charming spots in the country." Commenting on its citizens, he said that if one of them is complimented on the appearance of the town he puts on an air of indifference, "a sort of I-have-seen-it-look-better-a-thousand-times look"[1]

Considerable criticism, particularly from Whig newspapers, was forthcoming because of the delay in the proceedings.[2] On June 9 the witnesses were formally summoned by the sergeant-at-arms by calling them three times at the door. "The ceremony was very impressive to the immediate audience. Its effect upon the more distant portions of the state we have not yet learned," said the Madison *Journal* (June 10, 1853). As a more effective method, attachments were issued by the senate.

On Monday, June 13, the trial of the case began in earnest, opening with the argument of Mr. Ryan, which concerned itself largely with the grounds upon which a verdict of guilty could be found in an impeachment proceeding. He argued that the right to impeach concerned not only crimes and misdemeanors, but also, as a distinct and separate ground, corrupt conduct in office. He considered all wilful maladministration of office to be corrupt conduct, and said, "he who, no matter how little, departs from the duties of his office, is guilty of corrupt conduct in his office."[3] He then took up the various charges, claiming that each of them stated a separate reason for the removal of Judge Hubbell. His opening speech took the greater part of the first day, whereupon the examination of witnesses upon the part of the prosecution was begun. Early in the proceedings Mr. Knowlton, after stating that Hubbell desired a trial

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[1] *Sentinel,* June 13, 1853.

[2] See *Sentinel,* June 13, 1853; Madison *Journal,* June 9, 10, 1853; and reply to these in Madison *Argus and Democrat,* June 11, 1853, and *Free Democrat,* June 16, 1853.

[3] *Trial,* p. 47.

on all of the charges, but maintaining that consent could not confer jurisdiction, objected to the jurisdiction in general, and particularly regarding matters which occurred before the new term of the judge. These points were to be submitted without argument. Ryan, however, argued the questions at some length, and drew out a short reply from Mr. Arnold.[1] The first objection, based on the use of the words "House of Representatives" instead of "Assembly" in section 13, article vii of the constitution was overruled unanimously, and the second by a vote of 19 to 5.

The next move on the part of the defense was to request a copy of the testimony taken before the investigating committee. This was opposed by Ryan on the ground that the action of the committee was that of a grand jury, and that such a demand was unprecedented,[2] and the inspection of the testimony was refused.[3]

The examination of witnesses on the part of the prosecution then began, and continued through June 25. Some difficulty was experienced with Albert Smith, a justice of the peace of Milwaukee, who threatened to imprison the assistant sergeant-at-arms for contempt of his court if he persisted in his efforts to serve a writ of attachment.[4]

No particular order was observed in the calling of witnesses, the prosecution passing from one charge to another. The testimony thus presented to the senate was confused, the senators finding it difficult to obtain any clear idea of the case. The heat, moreover, was oppressive, the thermometer ranging from 90° to 96° in the shade. During one session Mr. Watson noted the preoccupations of the various senators, and recorded that only seven were listening to the proceedings.

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[1] *Ibid.*, pp. 70–77.

[2] *Ibid*, pp. 80–82.

[3] *Journal of the Court*, p. 49.

[4] *Trial*, p. 79. He did, however, attend as a witness; see *Journal of the Court*, p. 55.

June 27, Mr. Arnold opened the case on behalf of Judge Hubbell in an address which occupied nearly the entire day. In addition to a general consideration of the nature of the charges, he took up the specifications separately and discussed the testimony which had been brought out by the prosecution.[1] The examination of witnesses then continued until the second of July, when Mr. Knowlton stated that he was willing to submit the case to the court without argument; Mr. Sanders, however, refusing to agree unless the assembly would consent to this plan. In the afternoon it was announced that the prosecution would waive the opening of the case, that the defendant's attorneys would present their argument first, and that the counsel for the state would close.[2]

On Monday the fourth of July an effort was made to hold a session of the court, but the number of absentees prevented.[3] On the following morning, Mr. Knowlton, after stating that some fourteen specifications had been abandoned by the prosecution,[4] opened the argument for the defense. He occupied the greater portion of two days in a thorough discussion of the remaining charges.[5] His argument was not eloquent, but a careful, clear presentation of the facts as viewed from the standpoint of the defendant. He was followed by his associate, reputed one of the most eloquent and skillful lawyers of the state;[6] to one reading these arguments, however, Mr. Knowlton's appear superior. It may be that the time which he devoted to the matter accounts for this result, but certainly Mr. Arnold's argument does not afford much assistance in estimating the truth or falsity of the various charges. The fact that he was in poor health at the time probably partially accounts for this.

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1 *Trial*, pp. 283–337.

2 *Ibid*, pp. 469–470.

3 Madison *Journal*, July 5, 1853.

4 *Trial*, p. 472.

5 *Ibid*, pp. 472–556.

6 *Ibid*, pp. 562–613.

Friday morning Mr. Sanders, from the committee of managers, made a comparatively brief address,[1] and in the afternoon Mr. Ryan began his now famous indictment. He stated in opening that he was laboring under great physical disability, and that he knew that he could satisfy neither himself nor those who desired to hear him.[2] On Saturday morning the clerk wished to correct the printed journal of the day before, which stated that Mr. Ryan had commenced the argument for the "persecution." This somewhat innocent mistake does not appear to have been well received by Mr. Ryan, for he referred to it as a "stale and witless jest," and discussed the matter for some time, referring especially to the persecution to which those who practiced in the second circuit had been subjected.[3]

The speech was a severe arraignment of Hubbell, and a strong presentation of such portions of the testimony as told most strongly against him. Yet despite its eloquence it was not effective. Instead of selecting the few charges on which there was a possibility of a conviction, and concentrating attention upon those, Ryan dwelt upon nearly all of the specifications. He spoke at great length and with scathing invective upon those for which there was practically no proof. He magnified trivial incidents into proofs of corruption, and barely secured a single vote for conviction on matters which he pressed strongly. The effect was not only to create sympathy for Hubbell, but to obscure the strong points of the case.

Of the seventy specifications first presented, fourteen had been abandoned. On nineteen others the vote of acquittal was unanimous. In the other cases, one voted guilty on eleven specifications, two on four, four on one, five on two, six on six, seven on six, eight on four, nine on one, ten on one, and twelve on one. This last vote was a tie of the senate.

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1 *Ibid*, pp. 614–629.

2 *Ibid*, p. 630.

3 *Ibid*, p. 658.

Twelve of the senators voted not guilty on every specification; these were Alban, Bashford, Bovee, Briggs, Cary, Dunn, Lewis, Pinckney, Reed, Smith, Seaton, and Sterling. Of the remaining twelve Weil, Whittlesey, and Wakeley voted guilty twice; McLane eleven times; Stewart thirteen times; Vittum and Blair eighteen times; Hunter and Bowen twenty times; Prentice twenty-one times; Miller twenty-three times; and Allen twenty-four times.

There appear no special political or personal reasons for the several votes. The senate was heavily Democratic; of the seven Whigs five were among the twelve who voted constantly to acquit, while the other two voted guilty thirteen and twenty-one times respectively. There were two members from Milwaukee, one of whom always voted not guilty, while the other voted guilty twenty times. Of the other members from Hubbell's circuit one always favored him, while the other three voted guilty twice, eleven, and thirteen times respectively. Allen, who was strongest in his opposition to the judge, represented the extreme northwestern portion of the state,[1] while Miller, who was second in this respect, came from Rock County.

The vote which came nearest to conviction was that on the second specification of the fourth charge—that Hubbell had been of counsel in an indictment of William S. Hungerford for perjury in the United States court; and at the same time there was pending in the state court a case brought by Hungerford against Caleb Cushing, in which it was alleged that the same questions arose, and Judge Hubbell had heard an appeal of this case in the supreme court. There was no dispute as to the facts. Hubbell had been Hungerford's attorney in a motion to quash the indictment, and he had heard the Hungerford-Cushing case. This was done openly, and even if he had

[1] Crawford, La Crosse, Bad Ax, St. Croix, Chippewa, and La Pointe counties.

erred as to his right to so hear the case one would hardly, in the absence of some bad motive, call this corrupt conduct. As far as observed the testimony was silent as to such a motive.[1] But I do not believe that he erred legally. He might have avoided suspicion had he declined the retainer from Hungerford, but a salary of fifteen hundred dollars is not conducive to such declinations. A circuit judge then as now, had the right to practice in other courts; the modern practice, however, of refusing to exercise this right is to be commended. Hubbell, moreover, was accused primarily of corrupt conduct in hearing the case in the supreme court—not in taking the retainer.

The Hungerford-Cushing case involved the performance of certain trusts which it was alleged had been imposed in a conveyance of lands made by the plaintiff to the defendant. The bill of complaint recited the conveyance, set up the trusts, alleged non-performance, and demanded a re-conveyance. The indictment of Hungerford was for making an affidavit that he had made no agreement to convey these lands at the time he had entered them. Hubbell was retained on a motion to quash, which of course involved only the legal sufficiency of the indictment—a motion which was never argued, for Judge Miller quashed it of his own accord.

It seems evident that such an employment did not make Hubbell an attorney in the Hungerford-Cushing case. The matter was afterward presented to the supreme court on the same grounds as those presented to the court of impeachment, in an appeal from an order of Hubbell refusing a change of venue. Judge Whiton held that Hubbell was entitled to hear the case.[2] An examination of the cases has convinced me that

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[1] The late Justice Newman improperly heard an appeal in the supreme court, but I have heard of no one who has seen in this any evidence of corrupt conduct. See Case v. Hoffman, 100 Wis. 314, 352.

[2] Hungerford v. Cushing, 2 Wis. 397.

this decision is in accord with the weight of authority.[1] The result of the vote on this specification seems strange, since it was one of the weakest charges presented. On many others a vote of guilty could much more easily have been justified. Indeed, this was the opinion attributed to Ryan himself.[2]

The next vote was on the first charge, that of accepting a bribe; on this the vote stood ten to fourteen.[3] Briefly stated, the facts on this charge appeared to be that Hubbell had been asked by one of the parties to an equity case if he had decided it and had replied that he had done so in favor of the inquirer, one William Sanderson. He had then asked Sanderson for a loan of two hundred dollars, which was granted. Afterward Sanderson conceived the idea that there was no need of repayment, and had resisted the efforts of Hubbell to that end.[4] There was a manifest impropriety in a request for a loan under such circumstances, but the testimony does not make it appear that Hubbell regarded this as anything else than a loan. The next closest vote (nine to fifteen) was on another aspect of the same case, charging Hubbell with consulting with parties out of court.[5] It was based on some indefinite testimony of Sanderson's that he had spoken to Hubbell about the case at the

[1] See Cleghorn v. Cleghorn, 66 Cal. 309, 5 Pac. 516; McMillan v. Nichols, 62 Ga. 36; Wolfe v. Hines, 93 Ga. 329, 20 S. E. 322; Shoemaker v. South Bend Spark Arrester Co., 135 Ind. 471, 35 N. E. 280, 22 L R. A. 332; Glasscock v. Hughes, 55 Tex. 461; King v. Sapp, 66 Tex. 519, 2 S. W. 573; Cullen v. Drane, 82 Tex. 484, 18 S. W. 590; Blackwell v. National Bank, 97 Tex. 445, 79 S. W. 518; Stevens v. Hall, 8 Idaho 549, 69 Pac. 282.

[2] It was reported that one of the senators who had voted for conviction in this case, approached Ryan after the trial and said that the vote was pretty close. Ryan answered "Yes, and there wasn't a d——d thing in that specification anyhow, while you voted unanimously to acquit things ten times as bad."—*Sentinel*, July 16, 1853.

[3] Allen, Blair, Bowen, Hunter, McLane, Miller, Prentice, Stewart, Vittum, and Wakeley voted guilty.—*Trial*, p. 790.

[4] *Ibid*, pp. 89–94.

[5] Allen, Blair, Bowen, Hunter, McLane, Miller, Prentice, Stewart, and Vittum voted guilty.—*Ibid*, p. 814.

time it was brought, and was not nearly so strong as the bribery charge.

Eight senators voted guilty on four other specifications. The first alleged that Hubbell had purchased a judgment against the city of Milwaukee from one Jonathan Taylor, and while so owning it had made a pretended assignment of it to one Levi Blossom, and then had heard a suit brought on the judgment. A strong prima facie case was made out by the state. In defense, Blossom testified that Hubbell had no interest in the judgment at the time of the suit, but that afterwards it was transferred to Henry P. Hubbell, a nephew of the judge, because he had sworn to take nothing but cash from the city and it was proposed to pay him in bonds. In order that he might not be foresworn he had the payment made to Henry P. Hubbell.[1] The story told by Blossom sounds somewhat improbable; but it was not impossible, and not being directly contradicted Hubbell was entitled to a vote of not guilty on the testimony as it stands.[2]

A refusal to hold a special term of court also brought out eight votes of guilty. In that case Hubbell took the position that in a matter of favor he had the right to distinguish between his friends and his enemies; not necessarily a corrupt position, although not entirely altruistic.[3]

A phase of the Hungerford case brought out eight votes of guilty. This was on specification 8 of article 7 and specification 2 of article 9, which charged that Hubbell had insisted on an argument of a motion at a certain time and that he had refused to give adequate time for argument. In a matter so in the discretion of a judge it is almost impossible to predicate corrupt conduct on an action of that kind, and there seemed to

[1] *Ibid.* pp. 391–408.

[2] Hunter, McLane, Miller, Prentice, Stewart, Vittum, Whittlesey, and Weil voted guilty.—*Ibid.* p. 790.

[3] Allen, Blair, Bowen, Hunter, McLane, Miller, Prentice, and Stewart voted guilty.—*Ibid*, p. 800.

be little in this charge.[1] Under charge 8, which accused Hubbell of immoral conduct, there were four specifications. In three of these the vote for acquittal was unanimous, and in the fourth one senator voted guilty.[2] In regard to the Haney case, prominent in the campaign of 1851, only one senator voted guilty.[3]

To my mind the charge concerning which the testimony was the strongest and in which it is difficult to excuse the conduct of the judge, was one on which only seven of the members of the senate voted guilty. This was known as the Hart divorce case, and was contained in specification 3 of article 4. It appears from the testimony that while still a practicing attorney, Judge Hubbell had made a somewhat imformal application for divorce before Judge Irwin of the territorial court, which had been refused for want of jurisdiction without a hearing, After Hubbell went upon the bench an application was made before him for the same divorce upon practically the grounds before made, and in the course of the taking of testimony before the commissioner he appeared as a witness regarding certain letters that he had written to Mrs. Hart. The matter was not contested, and the judge signed the decree.[4] In this matter the proof seems plain, and none of the extenuating circumstances brought forward by the defense were sufficient to justify Judge Hubbell's action. It was claimed that it was not proven that he had ever received a retainer from Mr. Hart in the original action; that the action before him was upon different grounds, and he was justified in appearing as a witness; and that he did not hear and determine the case because it was not contested. On the whole this charge seems to be better sustained than any other—the only one upon which there appears any doubt as to the propriety of a vote of not guilty.

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[1] Allen, Bowen, Hunter, McLane, Miller, Prentice, Stewart, and Vittum voted guilty.—*Ibid*, pp. 803, 806.

[2] Senator Vittum.—*Ibid*, pp. 803–805.

[3] Senator Miller.—*Ibid*, p. 792.

[4] *Trial*, pp. 133, 414, 442.

As soon as the result was known it was received by some of the people with great enthusiasm, and by others with scorn. Hubbell's friends organized a celebration at Madison, which is described by those who favored him as a large and enthusiastic affair,[1] and by those who opposed him as a farce.[2] A similar difference of testimony exists regarding the reception accorded him in Milwaukee. A special train went to Waukesha to meet him, and he was greeted at Milwaukee by a large crowd. This much is clear, but the other evidence conflicts. "It was a reception of which Judge Hubbell had every reason to be proud," said the *Sentinel* (July 18, 1853). Booth, on the other hand, headed his account, "The Farce Completed;"[3] but his impartiality is to be questioned because of the extreme position he had assumed.

The sentiment throughout the state was quite evenly divided, if we estimate it by the newspapers—our only means of judging. Of those journals whose sentiments I have gathered, either by direct consultation of the papers themselves or by extracts therefrom, seventeen favored Hubbell and twenty-two opposed him.[4] The bitterest opposition came from the *Free*

[1] *Milwaukee Sentinel*, July 20, 1853; *Madison Journal*, July 12, 1853.

[2] *Free Democrat*, July 14, 15, 16, 1853.

[3] *Free Democrat*, July 18, 19, 1853.

[4] Those favoring were: Milwaukee *Sentinel*, Milwaukee *News*, Kenosha *Democrat*, Mineral Point *Tribune*, Beloit *Journal*, Sauk County *Standard*, Potosi *Republican*, Racine *Democrat*, Waukesha *Chronotype*, Madison *Journal*, Sheboygan Lake *Journal*, Shullsburg *Pick and Gad*, Mineral Point *Democrat*, Fond du Lac *Herald*, Fond du Lac *Union*, Sheboygan *Secretary*, and Ft. Winnebago *Republic*.

Those opposing were: Milwaukee *Free Democrat*, Janesville *Gazette*, Janesville *Standard*, Dodge County *Gazette*, Racine *Advocate*, Watertown *Register*, Kenosha *Telegraph*, Watertown *Chronicle*, and *Democratic State Register*, Janesville *Free Press*, Washington County *Blade*, Sheboygan Falls *Free Press*, Sheboygan *Chronicle*, *Der Phœnix aus Nordwestern* (Sheboygan), Oshkosh *Courier*, Oshkosh *Democrat*, Grant County *Herald*, Beaver Dam *Republican*, Appleton *Crescent*, Madison *Argus and Democrat*, and Milwaukee *Banner*.

*Democrat,* whose most intemperate utterances are found in the issue of July 16, 1853, and continuing for some time afterward.

In the assembly a resolution was introduced, reciting that the house had presented satisfactory evidence in support of the impeachment, and that the acquittal was neither endorsed by the house nor warranted by the evidence. With this resolution was presented a letter written by Reed, president pro tem. of the senate, showing that he had favored Hubbell before the evidence was presented to the body over which he presided.[1] This resolution was received with indifference by the house, and was soon afterwards withdrawn by its author.[2] Much was made of Reed's letter in some quarters, but it indicated only that he had from the first believed in Hubbell's innocence. It is of course impossible to prevent members of such a body as an impeachment court from having an opinion before questions are formally presented thereto.

A curious aftermath of the trial was the failure of the legislature to agree on Ryan's compensation. The senate wished to give him $2,000, while the assembly would agree to but $1,000.[3] He at once brought suit in the supreme court against the state. The petition stating the employment and the services was demurred to by Experience Estabrook, attorney general; but the court decided that Ryan had stated a valid claim and ordered a jury trial.[4] At this the state was not represented, and the jury found for Ryan in the sum of $3,000.[5] It ap-

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[1] *Assembly Journal*, 1853, p. 981.

[2] Milwaukee *Sentinel*, July 15, 1853.

[3] The senate also wished to give Knowlton and Arnold $1,000 each.—Madison *Journal*, July 13, 1853.

[4] The papers, many of them in Ryan's handwriting, are still on file in the supreme court records.

[5] The jury was summoned by Willet S. Main, sheriff of Dane County, and consisted of James Morrison, John Favill, I. Gray, Abram Ogden, A. J. Ward, Meyer Friend, George P. Delaplaine, Charles Lum, Alonzo Wilcox, Arch. Treadway, C. B. Cook, and Elisha Burdick.—Madison *Journal*, Aug. 11, 1853.

peared that Mr. Estabrook had been called out of town by illness in his family, and that as soon as he found he could not attend the trial had sent to Governor Farwell a messenger from Baraboo, who failed to reach Madison in time.[1]

After three years upon the bench Judge Hubbell resigned to recommence the practice of law. In 1864 he represented the Milwaukee district in the assembly, and in 1869 applied to Governor Fairchild for an appointment as circuit judge to succeed Judge Arthur McArthur. He had secured a considerable endorsement from his circuit, but the governor refused to make the appointment, much to Hubbell's disappointment, as he had regarded this as a chance for vindication.[2] In 1870 he was appointed United States district attorney for Wisconsin, holding that position until 1875, dying the following year as the result of an accident.

So far as any evidence has shown, the trial of Judge Hubbell was an isolated episode in Wisconsin history. It may be that a wider and more intimate acquaintance with the history of the time would explain matters connected with the trial, and show its connection with the politics of the day. But the affair was very largely personal, and there are no indications that partisan, political, or local influence affected its course.

Judge Hubbell appears to have been a man of strong feeling, who made close friends and bitter enemies.[3] While the impeachment was directed by personal animus it could not have taken the course it did if he had filled his office in a judicial manner. While neither dishonest nor corrupt, his ideals were not high and he was not careful, as is now expected of our judges, to hold himself so as to avoid even the slightest appearance of evil. It seems questionable if a conviction would have

[1] Milwaukee *Sentinel*, Aug. 22, 1853; affidavits on file in case.

[2] See article by E. E. Bryant in *Green Bay*, ix, p. 68. Bryant was private secretary to Governor Fairchild.

[3] "He has more bitter personal enemies as well as more warm personal friends than most other men in the state."—W. H. Watson, in Milwaukee *Sentinel*, Jan. 31, 1853.

been warranted by the evidence, although much was brought out that placed Hubbell in an unpleasant light. But, however he erred, the impeachment even without a verdict of guilty, was of itself a punishment, and never since has a Wisconsin assembly felt called upon to make similar charges.